

evidence that regulatory parity is itself a justification for the proposed regulations.<sup>35</sup>

However, the 1993 Budget Act reflects a Congressional objective that, "*consistent with the public interest*, similar commercial mobile radio services are accorded similar regulatory treatment."<sup>36</sup> Consequently, the 1993 Budget Act revisions, as well as the Commission's organic statute, make clear that the agency's primary goal should be to serve the public interest.

Given that the FCC previously has rejected LEC/CMRS restrictions as contrary to the public interest,<sup>37</sup> separation should not be imposed solely for the sake of regulatory parity. Rather, separate affiliate requirements should be eliminated for all carriers and for all CMRS services. Such a result would further Congress' goal of creating "a pro-competitive, *deregulatory* national policy framework. . . ."<sup>38</sup>

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<sup>35</sup> See, e.g., *NPRM* at ¶2.

<sup>36</sup> See Budget Act at § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. at 392; *CMRS Second Report and Order*, 9 FCC Rcd at 1418, *citing* H.R. Rep. 102-213, 103rd Cong., 1st Sess. 494 (1993) (Conference Report) (emphasis added); see also H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. 259-260 (House Report).

<sup>37</sup> *Broadband PCS Order*, 8 FCC Rcd at 7751 n. 98, *citing* *BOC Safeguards Order*, 6 FCC Rcd 7751, 7614-26 (1991).

<sup>38</sup> See S. Conf. Rep. No. 230, 104th Cong., 2nd Sess. 1 (1996) (Joint Explanatory Statement) (emphasis added).

**3. Uniformity is an insufficient justification for the proposed rules.**

Uniformity, like regulatory parity, is not itself a justification for Commission action. The *NPRM* explains that a uniform set of safeguards, as opposed to the current case-by-case method, "should be more efficient for both the carriers and the Commission, as it will streamline the review process and provide a consistent regulatory framework for future competition."<sup>39</sup> At the same time, the Commission has recognized in this rulemaking that substantial differences exist between potential providers of CMRS that may justify different regulatory treatment.<sup>40</sup> By adopting a "uniform" set of rules for the sake of supposed efficiency and regulatory ease, the Commission would thus impose unnecessary regulatory burdens on many CMRS providers, which could in no way benefit the public.

**4. The proposed rules would not be applied uniformly and would not achieve parity in any event.**

Even if regulatory parity and uniformity were sufficient bases in themselves for Commission action -- which they are not -- the rules proposed in the *NPRM* would achieve neither of these goals, because all but a few LECs would be excused from the proposed requirements. First, only Tier 1 LECs would be subject to the rules, while

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<sup>39</sup> *NPRM* at ¶111.

<sup>40</sup> See, e.g., *NPRM* at ¶115.

hundreds of other telephone companies would not be so burdened.<sup>41</sup> Second, telecommunications giants such as AT&T and MCI that intend to offer integrated local, interexchange and CMRS services would not be subject to the proposed requirements. By limiting the applicability of the proposed rules to CMRS provided by a few LECs, the *Notice* would create more disparity, thereby nullifying the Commission's purported regulatory parity justification for acting.

**F. Imposing Separation Rules Or Nonstructural Safeguards Where No Regulation Existed Before Is Contrary To The 1996 Act.**

The 1996 Act established a strong national telecommunications policy that protects consumers through competition rather than regulation. Although the Act imposes some incremental regulation temporarily until the transition to competition is complete, the Act does not contemplate backsliding into ever increasing regulation.

The 1996 Act mandates that the FCC engage in periodic reviews of all of its regulations and eliminate regulations that are no longer necessary.<sup>42</sup> As demonstrated above, regulation is not necessary to prevent theoretical anticompetitive conduct that does not exist in practice. Therefore, imposition of the proposed regulations would be inconsistent with the basic goals of the 1996 Act.

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<sup>41</sup> *NPRM* at ¶¶90.

<sup>42</sup> See 47 U.S.C. §161(a), (b) (requiring biennial review of regulations and elimination of those that competition has made unnecessary).

**III. THE PROPOSED REGULATIONS WOULD IMPOSE SIGNIFICANT COSTS AND IMPAIR REALIZATION OF IMPORTANT NEW EFFICIENCIES AND SERVICES FOR CONSUMERS.**

Before imposing new separation requirements on all non-BOC Tier 1 LECs for in-region CMRS, the Commission must weigh the costs and benefits of such a policy. GTE submits that the costs to the non-BOC Tier 1 LECs and to the public of extending such regulation would greatly outweigh any plausible benefit. Indeed, as discussed below, the Commission already has determined this to be the case.

**A. The FCC Itself Has Previously Rejected LEC/CMRS Restrictions As Contrary To The Public Interest.**

In the *Broadband PCS Order*, the Commission found that "allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks."<sup>43</sup> The FCC further concluded that

these economies will promote more rapid development of PCS and will yield a broader range of PCS services at lower costs to consumers. In addition, allowing LECs to provide PCS service should encourage them to develop their wireline architectures to better accommodate all PCS services.<sup>44</sup>

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<sup>43</sup> *Broadband PCS Order*, 8 FCC Rcd at 7751.

<sup>44</sup> *Id.*

Thus, as the *Notice* recognizes, the FCC "declined to impose structural separation for PCS providers affiliated with LECs, including the BOCs, reasoning that such limitations on the ability of LECs to take advantage of their potential economies of scope would 'jeopardize, if not eliminate, the public interest benefits [sought] through LEC participation in PCS.'"<sup>45</sup>

Based on the record in that proceeding, the FCC determined that its cellular-PCS cross-ownership rules were "adequate to ensure that LECs do not behave in an anticompetitive manner."<sup>46</sup> In addition, the FCC "found that existing accounting safeguards were sufficient to protect against cross-subsidization by the LECs, and therefore declined to impose additional cost-accounting rules on LECs that provide PCS service."<sup>47</sup>

Similarly, in its recent order permitting wireline carriers to provide SMR service, the FCC expressly refrained from requiring LECs to establish structurally separate entities.<sup>48</sup> Instead, the FCC reiterated that existing safeguards were adequate, and directed LECs providing SMR service, or CMRS generally, to comply with the accounting safeguards as in the PCS context.

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<sup>45</sup> *Notice* at ¶15, citing *Broadband PCS Order*, 8 FCC Rcd at 7751.

<sup>46</sup> *Broadband PCS Order*, 8 FCC Rcd at 7751.

<sup>47</sup> *Notice* at ¶15.

<sup>48</sup> *Wireline SMR Order*, 10 FCC Rcd at 6294.

The *Notice* utterly fails to identify any change in circumstances that would justify imposing a separate affiliate requirement on all Tier 1 LECs. If companies like GTE were forced to provide CMRS through a separate affiliate, the efficiencies potentially derived from LEC/CMRS integration may be totally lost and consumers may be forced to pay higher prices because of the greater costs imposed on the service provider. Further, the provision of new services and innovations may be impaired by the proposed rules. If a LEC/CMRS provider is not permitted to integrate fully its landline and wireless operations, new technological features may not be available to wireless customers because a LEC provider may not have the capability to offer such services without the use of its wired network. The *Notice* also ignores the possibility that Tier 1 LECs might need to integrate their CMRS and LEC services to provide competitive LEC services in areas adjoining their LEC exchange areas and within their larger wireless service areas.

Given that the primary objective of the 1996 Act was to establish "a pro-competitive, *de-regulatory* national policy framework,"<sup>49</sup> the Commission should not lightly extend burdensome regulation -- such as a separate affiliate requirement -- without a clear, demonstrable showing of need. This is especially the case where, as here, such a requirement effectively would negate the public interest benefits of LEC participation in PCS and other CMRS.

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<sup>49</sup> *Notice* at ¶10, quoting S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

**B. The Proposed Reporting Requirements Are Not Needed And Would Be Unnecessarily Burdensome.**

In addition to the separation requirements discussed above, the *NPRM* proposes that all Tier 1 LECs providing broadband PCS within their in-region states file with the Commission a nonstructural safeguard plan with a description of: (1) the separate affiliate for the provision of PCS; (2) compliance with Part 64 and Part 32 accounting rules; (3) planned compliance with all outstanding interconnection obligations; (4) compliance with all outstanding network disclosure rules; and (5) planned compliance with the customer proprietary information requirements in Section 222 of the 1996 Act.<sup>50</sup> The FCC also seeks comment on whether to mandate public disclosure of rates, terms and conditions of service in cases where a LEC is reselling its cellular affiliate's services.<sup>51</sup>

Again, these reporting requirements are simply unnecessary given the lack of any evidence of anticompetitive conduct and the Commission's existing regulations. The proposed reporting requirements would raise carrier costs without justification. They burden the Commission's strained resources, diverting its attention from necessary duties. In fact, the Commission has eliminated unnecessary reporting

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<sup>50</sup> Notice at ¶116.

<sup>51</sup> *Id.* at ¶67.

requirements in the recent past.<sup>52</sup> The instant proposals constitute unjustifiable backsliding into regulation, and violate the *Cincinnati Bell* court's admonition to refrain from regulating based on a "predictive judgment as to the possible future behavior of future marketplace entrants."<sup>53</sup> Consequently, the Commission should not impose additional reporting requirements on parties without specific facts or economic theories to lend credibility to its theoretical concerns.

**1. There is no need for a separate CPNI compliance plan.**

As for the CPNI compliance plan, Section 222 of the Act governs all telecommunications carriers' use of CPNI. A separate CPNI compliance plan is no more necessary here than for any other telecommunications carrier, which also must comply with that section. GTE already has submitted comments on implementation of Section 222 in another Commission rulemaking.<sup>54</sup> Briefly, GTE believes notifications

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<sup>52</sup> See *Revision of Filing Requirements*, Notice of Proposed Rulemaking, CC Docket No. 96-23 (Feb. 27, 1996), ¶2 n.2 ("The [Common Carrier] Bureau eliminated the following reports: State Rate Case Report, AT&T Preliminary Cost and Revenue Report, and U S West Packet Switching Report. The Bureau reduced the frequency of the following reports: Interstate Access Minutes Reported by the National Exchange Carrier Association, and LEC Usage/Access Report"); *Revision of Filing Requirements and Implementation of Section 402(B)(2)(b) of the Telecommunications Act of 1996: Annual ARMIS Reports*, Order, CC Docket No. 96-23 (March 20, 1996), ¶1 (reducing frequency of ARMIS reports from quarterly to annually).

<sup>53</sup> *Cincinnati Bell* at 760.

<sup>54</sup> For a more complete discussion of these issues, see GTE's Comments and Reply Comments in CC Docket No. 96-115.



should be sufficient to inform customers that they may restrict use of their individually identifiable CPNI. However, Section 222(c)(1) of the 1996 Act -- unlike Section 222(c)(2) -- does not require a customer's affirmative written or oral consent to such use; it merely requires "approval." Thus, an "opt-in" approach should be permitted, where carriers provide notification that customers may restrict use of their CPNI by notifying the carrier.

As a separate matter, Section 222 should be read broadly to permit carriers to use information obtained in the provision of telecommunications services in marketing other telecommunications service offerings. Additionally, GTE believes that toll service provided by means of CMRS should be included in a generic "toll" category for CPNI purposes, rather than creating a separate grouping for CMRS. The *Computer III* CPNI rules should be eliminated because they are superseded by Section 222. Moreover, the Commission should not require that subscriber list information be provided at rates based on incremental cost.

**2. There is no need to mandate public disclosure of rates, terms and conditions of service when a LEC is reselling services of an affiliated CMRS provider.**

Finally, there is no basis for imposing special safeguards when a LEC resells CMRS services -- no matter from whom the service is obtained. In particular, there is no reason to establish unique obligations on the LEC or the CMRS providers affiliated with a Tier 1 LEC to disclose the CMRS rates, terms and conditions simply because of the affiliation. The LEC's purchase of service for resale presents no competitive risks or

concerns that are not already addressed by the Commission's general resale policies and requirements.


#### IV. CONCLUSION

For the foregoing reasons, GTE respectfully urges the Commission to refrain from imposing new separate affiliate and nonstructural safeguards on all Tier 1 LECs. The proposed new regulatory burdens are neither necessary nor in the public interest.

Respectfully submitted,

GTE SERVICE CORPORATION, on behalf of  
its affiliated domestic telephone and wireless  
companies

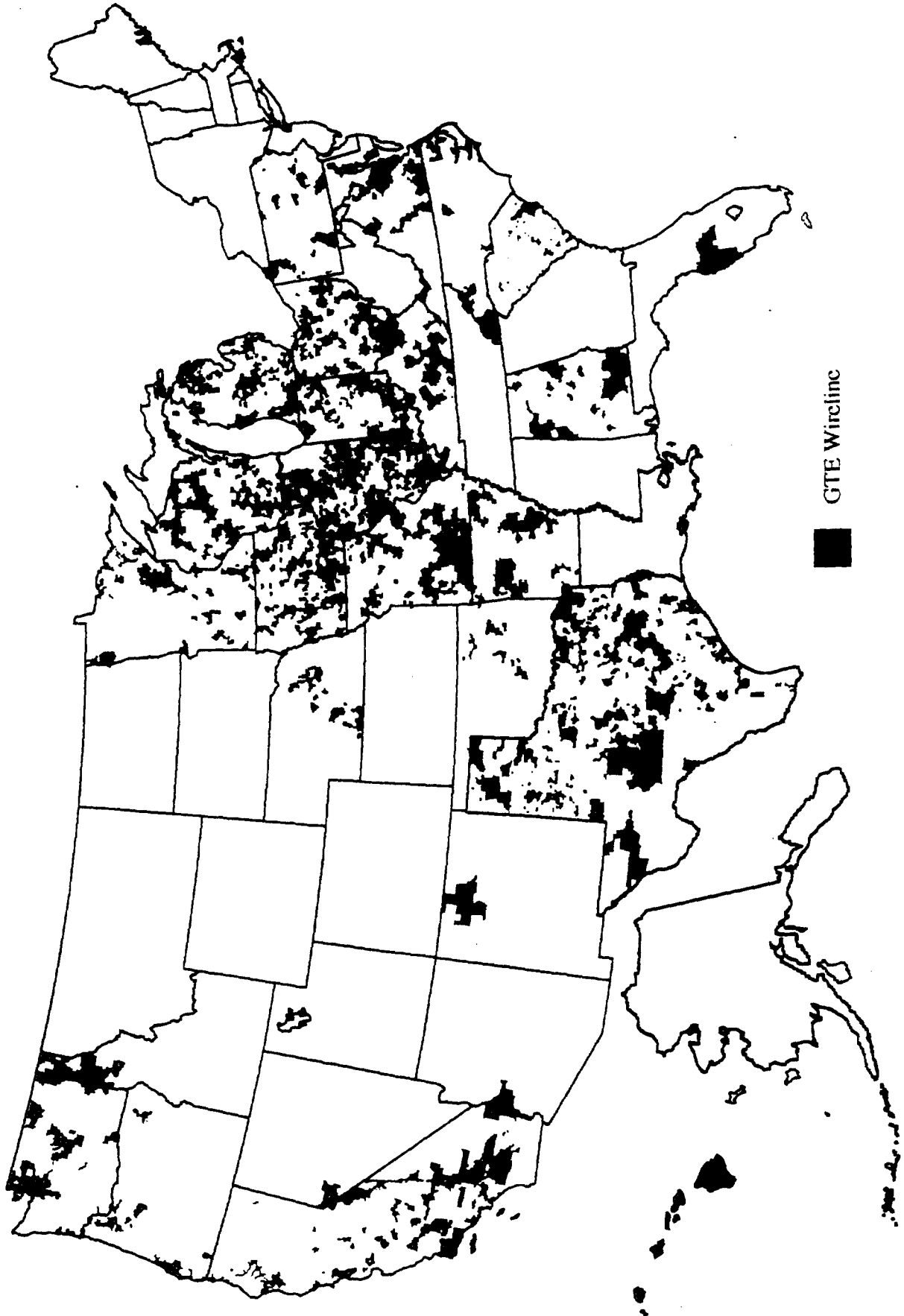
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# GTE Wireline



# GTE Wireless

